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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001/T-680	1716

26161 7590 10/21/2003

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/21/2003

28

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-9,11-13,16-18,20-25,27-44,46-51,53-57,61 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,11-13,16-18,20-25,27-44,46-51,53-57,61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>27</u> . | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Acknowledgment is made of the amendment and declaration under 37 C.F.R. §1.131 filed 8/8/03. Claims pending are 1, 2, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, 53-57, 61 and 63-65. Claims 61 and 65 have been amended. Claim 62 has been cancelled.

#### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. The rejection of Claims 1, 2, 6-9, 12, 13, 16-18, 21-25, 28-33, 35-39, 41-44, 47-51 and 54-56 under 35 U.S.C. 102(a) as being anticipated by Banowski et al. is maintained for the reasons of the record.
3. The rejection of Claims 31, 33, 34, 36, 37, 39, 40, 42, 43, 46, 48-50, 53, 55 and 56 under 35 U.S.C. 102(e) as being anticipated by Look et al. is maintained for the reasons of the record.

#### ***Claim Rejections - 35 USC § 103***

4. The rejection of Claims 5, 11, 20, 27, 34, 40, 46 and 53 under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Shelton is maintained for the reasons of the record.
5. The rejection of Claims 57, 61 and 63-65 under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Iovanni et al. is maintained for the reasons of the record.
6. The rejection of Claims 1, 2, 5-9, 11-13, 16-18, 20-25, 27-30, 32, 35, 38, 41, 44, 47, 51, 54 and 57 under 35 U.S.C. 103(a) as being unpatentable over Look et al. is maintained for the reasons of the record.

7. The rejection of Claims 61 and 63-65 under 35 U.S.C. 103(a) as being unpatentable over Look et al. in view of Iovanni et al. is maintained for the reasons of the record.

***Response to Amendment***

8. The declaration of Cheryl Galante filed on 8/8/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the Look et al. reference. See reasons below.

9. The previously filed declaration of David Elliott under 37 CFR 1.131 has been considered but is ineffective to overcome the Banowski et al. reference for the following reasons:

Neither declaration demonstrates that the Applicant had in possession either as much as disclosed in the cited prior art or, alternatively, as much as claimed in the instant claims. Thus, both declarations show that the Applicant was in possession of antiperspirant compositions containing aluminum-zirconium salts as an antiperspirant active. However, aluminum-zirconium salts are not the only antiperspirant actives recited in the cited prior art or in the Applicant's claims.

***Response to Arguments***

10. Applicant's arguments filed 8/8/03 have been fully considered but they are not persuasive.

The Applicant argues that the composition of Claim 57 is novel over the Look reference because the first portion of the exemplified compositions does not contain an antiperspirant salt and the second portion does not contain the claimed hydrophilic vehicle. In response, the Examiner agrees with the Applicant that Look et al. does not anticipate Claim 57 (neither Claim 57 nor claims dependent thereon have been rejected under 35 USC 102 over Look et

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al.), but it is the Examiner's position that Claim 57 is obvious over the Look reference. Look et al. teach multi-composition stick products including deodorant/antiperspirant sticks which include a first composition and a second composition which differ in one component such as colorant, fragrance, etc. See Abstract. The deodorant/antiperspirant compositions of Look et al. may contain conventional ingredients (both hydrophobic and hydrophilic) included in deodorant/antiperspirant compositions. See [0078]. Further, the compositions of Look et al. contain one or more antiperspirants. See [0079]. Although, the exemplified composition does not contain antiperspirant and hydrophilic vehicle in both phases, the reference's teaching is not limited to the example and has to be considered as a whole. The reference clearly gives one a reasonable expectation of success for making antiperspirant sticks which would contain an antiperspirant salt and/or propylene glycol in both portions and would differ in only one component such as colorant. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to employ antiperspirant salts and/or propylene glycol in both portions of the Look's multicomposition sticks in view of the Look's teachings that the deodorant compositions may include antiperspirant salts and propylene glycol and that the compositions may differ in only one component such as colorant or fragrance. One of ordinary skill would have been motivated to employ antiperspirant salts in both portions of the Look's multicomposition sticks in order to achieve increased antiperspirant effect. One of ordinary skill would have been motivated to employ propylene glycol in both portions of the Look's multicomposition sticks in order to solubilize the antiperspirant salt(s).

*Conclusion*

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

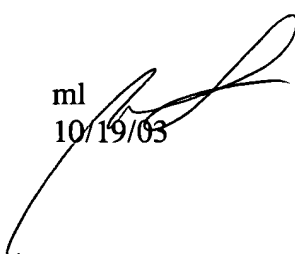
The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


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THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

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